

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the County of Merced for an Order Authorizing Construction of Two New Grade Separated Crossings Over One Rail Line Operated by the Burlington Northern Santa Fe Railway Company at the Proposed Campus Parkway in the County of Merced, State of California.

Application 15-06-003  
(Filed June 4, 2015)

**DECISION GRANTING AUTHORIZATION TO THE COUNTY OF MERCED TO  
CONSTRUCT A NEW GRADE-SEPARATED CROSSING WITH TWO  
STRUCTURES OVER THE TRACK AND RIGHT-OF-WAY OF THE BNSF  
RAILWAY COMPANY AT THE PROPOSED CAMPUS PARKWAY  
EXPRESSWAY IN THE COUNTY OF MERCED**

**Summary**

This decision grants the County of Merced authorization to construct one new grade-separated highway-rail crossing over the track and right-of-way of the BNSF Railway Company at the proposed Campus Parkway Expressway in the unincorporated area of County of Merced. The new grade-separated crossing will be comprised of two separate structures, with two vehicular traffic lanes each and approximately 50 feet apart, one for northbound traffic and the other for southbound traffic, and together will be identified as Campus Parkway Expressway, California Public Utilities Crossing Number 002-1052.90-A and United States Department of Transportation Number 929016S.

This proceeding is closed.

**Discussion**

The Merced County (County) proposes to construct a new public grade-separated highway-rail crossing (crossing) over the track of the BNSF Railway Company's (BNSF) Stockton Subdivision in unincorporated County. In Application (A.) 09-07-030 and Decision 09-12-012, the County was previously granted authority by the California Public Utilities Commission (CPUC/Commission) to construct the proposed crossing; however, the County did not exercise the authority granted to complete construction of the crossing within the time period allotted by the Commission. The County stated that a lack of funding forced it to delay construction of the project. As a result, the County submitted A.15-06-003 for approval to resume the project.

The project involves the construction of two new grade-separated structures approximately 50 feet apart. The two new structures together are considered a single grade-separated highway-rail crossing. The crossing will provide two travel lanes for northbound vehicular traffic and two lanes for southbound traffic. The new crossing will cross over the BNSF track and State Route (SR) 140 in the County and will be identified as CPUC Crossing No. 002-1052.90-A and United States Department of Transportation (DOT) No. 929016S.

The project is part of the overall Campus Parkway Project. The Campus Parkway Project includes a 4.5-mile long, 4-lane expressway that will extend from the SR 99/Mission Avenue interchange to Yosemite Avenue in the northeastern part of the County by crossing several local roadways, the BNSF track, and SR 140. The expressway will be known as the Campus Parkway Expressway and will provide additional access to SR 99, not restricted by BNSF tracks for existing and planned development in the northern and eastern portions of the City of Merced (City) and County. This expressway will also

provide additional emergency service access in the City and County, and improve access to the Merced campus of the University of California, near Yosemite Avenue which is at the end of the expressway.

The existing traffic circulation network that serves the northern and eastern portions of the City, as well as the adjacent urban portions of the County, is inadequate to support planned growth. Motorists traveling from north to south toward the City/SR 99 encounter increasingly congested conditions on main arterial roadways within the City. Capacity improvement on north-south arterial roadways such as the City's M and R Streets would require substantial right-of-way acquisition through established neighborhoods. Motorists, bicyclists, and pedestrians traveling north-south through the City have only one existing grade-separated crossing at G Street to cross the BNSF track. On other north-south roadways, the BNSF tracks must be crossed using at-grade highway-rail crossings. The project, as part of the Campus Parkway Expressway, will help improve traffic circulation problems by increasing the capacity of the regional circulation network.

At the proposed crossing, the train count will consist of 30 BNSF freight and 12 Amtrak passenger trains per day. The County will include the following features in the construction of the Campus Parkway Overpass:

- The crossing will comply with all minimum clearance requirements set forth in Commission General Order (GO) 26-D;
- The crossing will have two northbound vehicular travel lanes and two southbound travel lanes;
- The crossing will have one shared use pedestrian and bicycle path on the grade-separated for southbound traffic; and

- The crossing will have type 7 chain link railing on both sides of the overhead structures.

The crossing will have a temporary impaired vertical clearance of 21 feet 6 inches during construction. BNSF will notify all operating railroads of the temporary impaired vertical clearance. The County will notify BNSF and the Commission's Safety and Enforcement Division – Rail Crossings and Engineering Branch (RCEB) at least 15 days but not more than 30 days in advance of the date when the County will create the temporary reduced vertical clearance. The County may submit the notification electronically to RCEB at [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

### **Environmental Review and CEQA Compliance**

The California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, et seq.) (CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,<sup>1</sup> or the one with the greatest responsibility for supervising or approving the project

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<sup>1</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

as a whole.<sup>2</sup> Here, the County is the lead agency for this project under CEQA because it intends to construct the proposed grade-separated crossing. The Commission is a responsible agency because it has jurisdiction to issue a permit for the public road overcrossing portion of the overall project.

As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.<sup>3</sup> Also, as a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.<sup>4</sup>

Pursuant to CEQA and the National Environmental Policy Act (NEPA),<sup>5</sup> the County, California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA) prepared environmental documentation titled *Campus Parkway Project, Final Environmental Impact Statement (FEIS)*, approved November 2006, which identifies environmental impacts and associated mitigation measures related to the construction of the Campus Parkway Expressway, which this project is a part. In the FEIS, there are several impacts that are identified as significant effects on the environment due to the overall construction of the Campus Parkway Expressway.

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<sup>2</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

<sup>3</sup> CEQA Guidelines, Sections 15050(b) and 15096.

<sup>4</sup> CEQA Guideline Section 15096(g).

<sup>5</sup> 42 USC 4332 (2) (c) of 1969 as amended. Projects undertaken in California that utilize federal funds, require discretionary federal approval, or are undertaken by federal agencies are subject to both NEPA and CEQA.

On December 20, 2006, the County filed a Notice of Determination (NOD) as required by CEQA. In the County's NOD it determined that the Campus Parkway Project will have a significant effect on the environment, mitigation measures would be made a condition for project approval, and the County would adopt a Statement of Overriding Considerations (SOC) for the Campus Parkway Project.

The SOC found that construction of the new expressway will result in certain significant adverse impacts which will not be substantially lessened or avoided even with the adoption of all feasible mitigation measures or alternatives. The specific impacts subject to these overriding considerations include noise and farmland/agricultural land impacts. Despite these impacts, the County chose to approve the Campus Parkway Project, because in its view, the economic, social, technological, legal, and other benefits of the project outweigh the unavoidable adverse environmental effects. Based on these views, in order to approve the Campus Parkway Project, pursuant to CEQA, the County adopted an SOC.

The FHWA issued a Record of Decision (ROD) on the FEIS for the overall Campus Parkway Project on May 1, 2007. In a letter submitted as part (Exhibit F) of the County's Application, the County states that Caltrans revalidated the conclusion of the NEPA on September 1, 2010. The County further states in this letter that the environmental setting or site conditions in the Campus Parkway Segment 2 (the part of the Campus Parkway Project which extends from Childs Avenue to SR 140), of which this proposed crossings project is a part, have not changed since the ROD was originally approved, nor have there been any changes in the layout or design of the Campus Parkway Segment 2 that would result in new significant environmental impacts or a substantial increase in the

severity of significant impacts already identified in the CEQA documents. Therefore, as a result of these factors, the County anticipates approval of a revalidation by Caltrans after the County secures the remaining funds to construct the Campus Parkway Segment 2.

The Commission reviewed and considered the *Campus Parkway Project, Final Environmental Impact Statement*, the County's NOD and SOC, and the FHWA's ROD as these documents relate to this grade-separated highway-rail crossing and finds these documents adequate for our decision-making purposes.

The County identified potentially significant impacts related to community resources (aesthetics), air quality, and noise for the construction of the overcrossing portion of the project.

The anticipated potential impact on the visual character or quality of residential suburban landscape relates to unobstructed views; and within agricultural areas, residential views from Olive Avenue, SR 140 and some isolated parcels. Mitigation measures adopted to reduce these impacts to less than significant levels include:

- 1) preservation of vegetation or landscaping along the right-of-way to screen views of the roadway structures;
- 2) inclusion of architectural elements into the design of the roadway structures; and
- 3) provision of landscaping that helps shield the overcrossing structure at locations most visible to nearby residents;

Anticipated impacts to noise levels from the overcrossing include potentially significant permanent ambient traffic noise levels. Various noise barriers, berms and open-graded asphalt concrete options were considered by the County. The County will consider including noise barriers in the form of

soundwalls or berms or a combination of both in the final design for homes that are within 200 feet of the overcrossing right-of-way. Project construction noise could occasionally reach levels considered potentially significant; but this impact would be short-term and only occur during active construction.

Potential air quality impacts were identified during the construction of the Campus Parkway construction that may periodically violate relevant air quality standards for NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>. Mitigation measures to be implemented that would reduce such impacts to less than significant include:

- 1) Employment of dust control practices;
- 2) Limitation of pollutant emissions from construction equipment exhaust; and
- 3) A Dust Control Plan that would meet relevant air quality requirements.

### **Filing Requirements and Staff Recommendations**

This application is in compliance with the Commission's filing requirements, including Rule 3.7 of Rules of Practice and Procedure, which relates to the construction of a public highway across a railroad.

The Commission's Safety and Enforcement Division – RCEB has inspected the site of the crossing, reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossing be granted for a period of three years.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3359 dated June 25, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given



these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g) (2) of the Public Utilities Code and Rule 14.6(c) (2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

Elizaveta I. Malashenko is the assigned Examiner in this proceeding.

### **Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on June 26, 2015.
2. The County requests authority, under Public Utilities Code Sections 1201-1205, to construct one new grade-separated crossing over the track and right-of-way of BNSF at the Campus Parkway Expressway in the County. The new grade-separated crossing will be identified as CPUC Crossing No. 002-1052.90-A, and DOT No. 929016S.
3. The new grade-separated crossing will be comprised of two separate structures, with two vehicular traffic lanes each and approximately 50 feet apart, one for northbound traffic and the other for southbound traffic. The southbound structure will contain a pedestrian and bicycle path.
4. The crossing will comply with all minimum clearance requirements set forth in Commission GO 26-D.
5. The County is the lead agency for this project under CEQA, as amended.

6. The County, Caltrans, and FHWA prepared, pursuant to CEQA and NEPA, an FEIS approved in November 2006.

7. Pursuant to NEPA, FHWA issued a ROD on May 1, 2007.

8. Pursuant to CEQA, the County prepared a NOD, filed on December 20, 2006, and adopted an SOC in approving the project.

9. In a letter submitted as part of the County's Application, the County states that Caltrans revalidated the NEPA conclusion on September 1, 2010. The County further states in this letter that the environmental setting or site conditions in the Campus Parkway Segment 2 (the part of the Campus Parkway project which extends from Childs Avenue to SR 140), of which this crossing project is a part, have not changed since the ROD was originally approved, nor have there been any changes in the layout or design of the Campus Parkway Segment 2; therefore, as a result of these factors, the County anticipates approval of a revalidation by Caltrans after the County secures the remaining funds to construct the Campus Parkway Segment 2.

10. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIS, NOD, and SOC.

11. In the environmental documents, it has been determined that the overall Campus Parkway Project, of which this grade-separation construction is a part, will have a significant effect on the environment.

12. Potentially significant impacts are addressed by mitigation measures to reduce their severity to below significant levels.

13. The construction of the railroad grade-separation will not have a significant unmitigated effect on the environment independent of the greater Campus Parkway Expressway project.

14. The proposed crossing will provide safe and efficient public access across the existing railroad track and will result in increased public safety.

### **Conclusions of Law**

1. Environmental impacts such as aesthetic impacts, air quality, safety, transportation, and noise are within the scope of the Commission's permitting process.

2. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's FEIS, NOD, SOC, and ROD.

3. The FEIS, NOD, SOC, and ROD are adequate for our decision-making purposes.

4. The FEIS, NOD, SOC, and ROD were completed in compliance with CEQA.

5. The FEIS, NOD, SOC, and ROD reflect the Commission's independent judgement and analysis.

6. The FEIS, NOD, SOC, and ROD did not identify any unmitigated significant impacts relating to the at-grade highway-rail crossing aspect of the project.

7. The application is uncontested and a public hearing is not necessary.

8. The application should be granted as set forth in the following Order.

9. The proceeding should be closed.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The County of Merced is authorized to construct one new grade-separated crossing over the track and right-of-way of the BNSF Railway Company at the proposed Campus Parkway Expressway in the County of Merced. The new grade-separated crossing will be identified as California Public Utilities

Commission Crossing Number 002-1052.90-A and United States Department of Transportation Number 929016S.

2. The new Campus Parkway grade-separated highway-rail crossing shall have the crossing treatments and configuration described above and specified in the County of Merced's application and its attachments and addendum.

3. BNSF Railway Company shall notify all operating railroads that will traverse the proposed crossing of the temporary impaired vertical clearance.

4. County of Merced shall notify BNSF Railway Company and the California Public Utilities Commission's Safety and Enforcement Division –Rail Crossings and Engineering Branch (RCEB) at least 15 days but not more than 30 days in advance of the date when the County creates the temporary reduced vertical clearance. The County of Merced may submit the notification electronically to RCEB at [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

5. The County of Merced shall notify the California Public Utilities Commission's Safety and Enforcement Division – Rail Crossings and Engineering Branch at least 5 business days prior to opening the crossing. Notification should be made to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within 30 days after completion of the work under this order, the County of Merced shall notify the Rail Crossings and Engineering Branch in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission's web site Form G page at <http://www.cpus.ca.gov/PUC/safety/Rail/Crossings/formg>. This report may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. Within 30 days after completion of the work under this order, BNSF

Railway Company shall notify the Federal Railroad Administration of the existence of the roadway over track crossing by submitting a United States Department of Transportation CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently BNSF Railway Company shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

8. The County of Merced shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

9. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

10. A request for extension of the three-year authorization period must be submitted to the California Public Utilities Commission's Safety and Enforcement Division, Rail Crossings and Engineering Branch at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

11. The application is granted as set forth above.

12. Application 15-06-003 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.